

MEMORANDUM

JULY 26, 1994

TO: BOSTON REDEVELOPMENT AUTHORITY and
MARISA LAGO, DIRECTOR

FROM: BRIAN DeLOREY, ASSISTANT DIRECTOR FOR ECONOMIC DEVELOPMENT
KEVIN MORRISON, ACTING CHIEF GENERAL COUNSEL

SUBJECT: ANDERSON STREET ASSOCIATES II CHAPTER 121A PROJECT
CERTIFICATE OF PROJECT TERMINATION AND RELATED MATTERS

EXECUTIVE

SUMMARY: With regard to the termination of Anderson Street Associates II Chapter 121A Project ("Anderson II" and "Project"), the following are hereby requested: (1) a determination and finding that Anderson Street Associates II, a Massachusetts limited partnership, has carried out the obligations and performed the duties imposed on it by Chapter 121A; (2) authorization for the Director to execute and deliver a Certificate of Project Termination with a termination date of August 2, 1994; and (3) authorization for the Director to execute a Payment In-Lieu-of Tax Agreement.

PROJECT BACKGROUND

In 1975, a single project was approved under the name "Anderson Street Associates". This project involved the acquisition and development of two parcels in Ward 5, Beacon Hill, into low and moderate income rental housing, some commercial/retail space and a garage. The parcels to be acquired included: (1) a garage then owned by Massachusetts General Hospital ("MGH") on Cambridge Street (the "MGH Property"); and (2) existing townhouses at 14-20 Anderson Street and 1-2 Anderson Place (the "Anderson Properties"). In 1979, the project was revised and split into two technically separate projects now known as "Anderson I", the rehabilitation of the MGH Property as described below, and "Anderson II", the rehabilitation of the Anderson Properties as described below.

ANDERSON I

The Report and Decision for the original project was adopted by the Authority on July 10, 1975, approved by the Mayor on August 5, 1975 and filed as approved with the City Clerk's Office on August 8, 1975. The original project involved the rehabilitation of both the MGH Property and the Anderson Properties into 59 units of low and moderate income rental housing with appurtenant facilities including approximately 14,900 square feet of commercial/retail space and a 22-car garage. The 121A entity authorized to undertake the project was Anderson Street Associates, a Massachusetts limited partnership.

A First Report and Decision Amendment (the "First Amendment"), which consisted of 6 votes, was adopted by the Authority on September 29,

1977, approved by the Mayor on October 6, 1977 and filed as approved with the City Clerk's Office on October 13, 1977. The First Amendment authorized the transfer of partnership interests in Anderson Street Associates to two new General Partners and changed the original project. The number of rental housing units was increased to 89, the commercial/ retail space was reduced to approximately 5,625 square feet and the garage was enlarged for 27 cars. The rehabilitation of the MGH Property only was completed with financing from the Massachusetts Housing Finance Agency. The Anderson Properties were not acquired by Anderson Street Associates.

This original project was approved prior to the effective date of the so-called "1975 Chapter 121A Amendments" (St. of 1975, c. 827), i.e., March 22, 1976, and the exemption from real and personal property taxes ("tax exemption") under Section 10 of Chapter 121A ("Section 10") had a 40 year period.

ANDERSON II

A Second Report and Decision Amendment (the "Second Amendment") was adopted by the Authority on July 19, 1979, approved by the Mayor on July 31, 1979, and filed as approved with the City Clerk on August 2, 1979. In effect, the Second Amendment authorized the severance or deletion of the Anderson Properties from the original project and the development of those properties into 23 units of rental housing by a separate and new 121A entity, namely Anderson Street Associates II, a Massachusetts limited partnership. A new Report and Decision on what is now called Anderson II was adopted in conjunction with the beforementioned Second Amendment and the approval dates are the same. The tax exemption for the new project had a 15 year term since the "1975 Chapter 121A Amendments" were applicable.

Anderson Street Associates II, in connection with the Project, entered into a Regulatory Agreement with the Authority on January 10, 1980 (the "Regulatory Agreement") and entered into a 6A Contract, a payment in-lieu-of-tax agreement with the City of Boston on January 21, 1980 (the "6A Contract").

CERTIFICATE OF PROJECT TERMINATION

When approved, Anderson II or the Project was subject to the 1975 Amendments to Chapter 121A, and thus had a base term of 15 years. No extension beyond the 15 year term was approved by the BRA in the new Report and Decision. The effective approval date for the Project was August 2, 1979 (the date of filing of the Report and Decision with the City Clerk) and in accordance with the 15 year term, the potential termination date would be August 2, 1994.

Notwithstanding the potential termination date, Chapter 121A, §18C, sixth paragraph, requires the BRA to make a determination and finding that a Chapter 121A entity has satisfied the obligations and duties imposed by Chapter 121A and to issue a "certificate" evidencing the same. After the "termination date" specified in the "certificate", the Chapter 121A entity will no longer be subject to, except for any outstanding liabilities, nor will it enjoy the rights and privileges of Chapter 121A.

Chapter 121A, §18C, sixth paragraph, provides as follows, with emphasis added:

"If the persons or organizations described in this section have carried out their obligations and performed their duties as imposed by this chapter for a period of fifteen years from the date of approval of the project and for such further time any period of extension granted pursuant to section ten, shall be in effect, to the satisfaction...of the Boston Redevelopment, as evidenced by a certificate issued...by said authority..., they shall thereafter no longer be subject to the obligations of this Chapter except as to any liability therefore incurred nor shall they enjoy the rights and privileges here granted."

The Treasury Department of the City of Boston has confirmed that Anderson Street Associates II for calendar year 1993 and all previous years has paid all required excise taxes to the state Department of Revenue and all payments under the 6A Contract, to the City of Boston. Enclosed is a copy of a letter, dated July 25, 1994, from Robert T. Walthall, 121A Manager, City of Boston Treasury Department, confirming that all required excise taxes and 6A Contract payments have been paid.

RECOMMENDATION

By letter, dated July 22, 1994, counsel for Anderson Street Associates, II provided an opinion that the owner and the Project are in compliance with, and there are no outstanding defaults under, the provisions of the Report and Decision, the Regulatory Agreement and the 6A Contract. Copies of this opinion letter and a related affidavit are enclosed.

It is recommended that a determination and finding be made that Anderson Street Associates II has satisfied all of the applicable obligations and duties imposed on it under Chapter 121A and therefore a Certificate of Project Termination should be issued in substantially the form enclosed herewith. When executed in recordable form and delivered, counterparts of the certificate will be sent to or filed with Anderson Street Associates II, the City of Boston, respectively the City Clerk, the Collector-Treasurer, Treasury Department and the Commissioner of Assessing, Assessing Department, and also with the state Department of Revenue.

Also, since the exemption for the Project will terminate as of August 2, 1994, there will be a "gap period" wherein the property which constitutes the Project will not be taxable with regard to normal real estate taxes under G.L. c. 59. Thus, it is further recommended that the Director be authorized to enter into an agreement with Anderson Street Associates II in connection with a payment in-lieu-of-tax for the gap period, the terms and conditions of which must be acceptable to the BRA Director and the Commissioner of Assessing.

The Anderson I Project had a 40 year term and shall remain subject to Chapter 121A until 2015.

Appropriate votes follow:

VOTED: That the Boston Redevelopment Authority ("BRA") in accordance with G.L. c. 121A, §18C, sixth paragraph, hereby determines and finds with regard to the Anderson Street Associates II Chapter 121A Project (the "Project") as follows: (1) that Anderson Street Associates II, a Massachusetts limited partnership, has carried out its obligations and performed the duties as imposed on it by G.L. c. 121A and the St. 1960, c. 652, as amended (hereinafter collectively "c. 121A"), including those under the Regulatory Agreement with the BRA and the 6A Contract with the City of Boston, to the satisfaction of the BRA; and (2) that the Project is terminated as of August 2, 1994 and thereafter the property which constitutes the Project and Anderson Street Associates II shall no longer be subject to the obligations, except for any outstanding liabilities incurred, nor shall they enjoy the rights, benefits, exemptions and privileges conferred or imposed by c. 121A.

VOTED: That the Director of the Boston Redevelopment Authority ("BRA") be, and hereby is, authorized to execute on behalf of the BRA, a Certificate of Project Termination with regard to the Anderson Street Associates II Chapter 121A Project in substantially the form as presented. Such Certificate of Project Termination shall be delivered to the Anderson Street Associates II, the Department of Revenue of the Commonwealth of Massachusetts and the City of Boston, respectively the City Clerk, the Commissioner of Assessing, Assessing Department and the Collector-Treasurer of the Treasury Department.

FURTHER

VOTED: That the Director of the Boston Redevelopment Authority ("BRA") be, and hereby is authorized to enter into an agreement by and among Anderson Street Associates II, the BRA and the City of Boston, acting by and through its Commissioner of Assessing, in connection with a payment in-lieu-of-tax covering the period from the date of termination under G.L. c. 121A and the date the property constituting the former Chapter 121A Project becomes taxable under G.L. c. 59, as amended (the "PILOT Agreement"). The terms and conditions of the Pilot Agreement must be acceptable to the Director and the Commissioner of Assessing. The Director shall not execute and deliver the Certificate of Project Termination and the c. 121A, §18(c) determination and finding shall not be final until such time as the PILOT Agreement is executed by all parties.

Boston

July 25, 1994

Brian DeLorey, Assistant Director for
Economic Development
Boston Redevelopment Authority
One City Hall Square, 9th Floor
Boston, MA 02201-1007

Re: Anderson Street Associates II Chapter 121A Project

Dear Mr. DeLorey:

In regard to the proposed termination of the above-captioned project under G.L. c. 121A, § 18C, sixth paragraph (as amended and applicable), you inquired as to whether Anderson Street Associates II, a Massachusetts Limited partnership and the owner of the project, ("Anderson II/LP") has paid in full both the urban redevelopment excise taxes, as required by c. 121A, § 10 (the "UR Excise Tax"), to the Department of Revenue, Commonwealth of Massachusetts ("DOR"), and the amounts due under the 6A Contract, dated January 21, 1980, (the "6A Contract") for calendar year 1993 and all prior years.

Based upon information provided by DOR, Anderson II/LP paid a UR Excise Tax for 1993 in the amount of \$31,304.25. According to DOR, this constitutes the payment in full of the excise tax for 1993 and no amounts are outstanding for any prior years.

Based on the records of the Office of Collector-Treasurer, Anderson II/LP paid under the 6A Contract for 1993 the amount of \$ 11,603.54 and no amounts are outstanding for any prior years.

Do not hesitate to call me with any questions regarding this matter at 635-4138.

Sincerely,

Robert T. Walthall

121A Manager

Thomas M. Menino, Mayor / TREASURY DEPARTMENT / BOSTON CITY HALL / CITY HALL PLAZA 02201



LEVY & HALPERIN
COUNSELLORS AT LAW
FIFTY MILK STREET
BOSTON, MASSACHUSETTS 02109

MARC D. CUMSKY

TELEPHONE (617) 350-7100
FAX (617)-350-7101

July 22, 1994

Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201

Re: Anderson Street Associates II (the "Owner")

Gentlemen:

Reference is made to the following documents:

1. Second Report and Decision Amendment adopted by the Authority on July 19, 1979, approved by the Mayor on July 31, 1979, and filed as approved with the City Clerk on August 2, 1979 (the "Decision");
2. Regulatory Agreement with the Authority dated January 10, 1980 (the "Regulatory Agreement"); and
3. A certain 'Contract Required by Section 6A of Chapter 121A of the General Laws' dated January 21, 1980 (the "6A Contract").

We have acted as legal counsel to the Owner, and at its request we have reviewed the Decision, the Regulatory Agreement, and the 6A Contract. We have also examined, on behalf of the Owner, such other matters and documents as we have deemed necessary and/or appropriate to render this opinion including, without limitation, an Affidavit of the Owner of even date herewith and attached hereto.

Based upon our review of the foregoing documents, and assuming the validity of the facts set forth in the Affidavit, it is our opinion that the Owner and the Project (as that term is defined in the 6A Contract) are in compliance with, and there are no outstanding defaults under, the terms of the Decision, the Regulatory Agreement, and/or the 6A Contract.

We are members only of the Bar of the Commonwealth of Massachusetts and, therefore, our opinions are limited to the laws of the Commonwealth of Massachusetts.

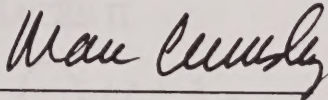
This opinion is subject to the following assumptions and qualifications:

1. We have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, and the conformity to original documents of all documents submitted to us as photostatic copies;
2. We have also assumed the validity of the factual representations set forth in the Affidavit of the Owner; and
3. We have assumed that each individual party executing a document had the legal competency to so execute such document (nothing has led us to conclude that this assumption is incorrect).

This opinion is rendered solely to you and may not be relied upon by any other person or entity for any purpose.

Very truly yours,

LEVY & HALPERIN

By: 

Marc D. Cumsky, a partner

Affidavit of Owner

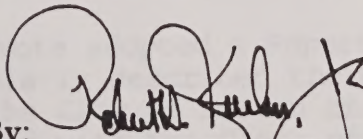
Reference is made to the following documents:

1. Second Report and Decision Amendment adopted by the Authority on July 19, 1979, approved by the Mayor on July 31, 1979, and filed as approved with the City Clerk on August 2, 1979 (the "Decision");
2. Regulatory Agreement with the Authority dated January 10, 1980 (the "Regulatory Agreement"); and
3. A certain 'Contract Required by Section 6A of Chapter 121A of the General Laws' dated January 21, 1980 (the "6A Contract").

The undersigned Anderson Street Associates II, a Massachusetts limited partnership (the "Owner"), hereby certifies that both the Owner and the Project (as that term is defined in the 6A Contract) are in compliance with, and there are no outstanding defaults under, the terms of the Decision, the Regulatory Agreement, and/or the 6A Contract.

Executed as a sealed instrument as of the 22d day of July, 1994.

ANDERSON STREET
ASSOCIATES II

By: 
Robert H. Kuehn, Jr.,
General Partner

CERTIFICATE OF PROJECT TERMINATION

Re: Anderson Street Associates II Chapter 121A Project

The undersigned hereby certifies that she is the Director of the Boston Redevelopment Authority ("BRA") and that by vote of the BRA taken on July 26, 1994, she has been authorized to execute this Certificate of Project Termination in connection with the Anderson Street Associates II Chapter 121A Project (the "Project") and deliver counterparts of the certificates to the following:

Anderson Street Associates II, a Massachusetts limited partnership organized and existing under G.L. c. 109. as amended; the General Partners of which are on file with the Secretary of State, Commonwealth of Massachusetts;

Clerk of the City of Boston;

Collector-Treasurer, City of Boston Treasury Department;

Commissioner of Assessing, City of Boston Assessing Department;
and

Department of Revenue, Commonwealth of Massachusetts.

Reference is made to the following documents and facts:

1. On July 19, 1979, the BRA by vote adopted a Report and Decision on the Project, as more particularly described therein. Such vote was approved by the Mayor of the City of Boston on July 31, 1979 and the vote as so approved was filed with the Clerk of the City of Boston (the "City Clerk") on August 2, 1979 (the "Report and Decision").

2. The properties that constitute the Project are described in a certain Deed to Anderson Street Associates II, as "Grantee" and recorded in the Suffolk Registry of Deeds in Book 9336, Page 155.

3. A certain Regulatory Agreement, dated January 10, 1980, by and between the BRA and Anderson Street Associates II (the "Regulatory Agreement").

4. A certain Contract Required By Section 6A of Chapter 121A of the General Laws, dated January 21, 1980, by and between the City of Boston and Anderson Street Associates II (the "6A Contract").

The Report and Decision, the Regulatory Agreement and the 6A Contract are on file with the City Clerk, Boston City Hall, One City Hall Square, Boston, MA 02201.

The undersigned further certifies as follows:

By vote taken on July 26, 1994 the Boston Redevelopment Authority ("BRA") in accordance with G.L. c. 121A, §18C, sixth

paragraph, made a determination and finding with regard to the Anderson Street Associates II Chapter 121A Project (the "Project") as follows: (1) that Anderson Street Associates II (the Massachusetts limited partnership) has carried out its obligations and performed the duties as imposed by G.L. c. 121A and the St. 1960, c. 652, as amended (collectively hereinafter "c. 121A"), including those under the Regulatory Agreement with the BRA and the 6A Contract with the City of Boston, to the satisfaction of the BRA; and (2) that the Project is terminated as of August 2, 1994 and thereafter the property which constitutes the Project and Anderson Street Associates II shall no longer be subject to the obligations, except for any outstanding liabilities incurred, nor shall they enjoy the rights, benefits, exemptions and privileges conferred or imposed by c. 121A.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand to this Certificate of Project Termination the ____ day of _____, 1994.

BOSTON REDEVELOPMENT AUTHORITY
By Its Director

Marisa Lago

APPROVED AS TO FORM:

Kevin J. Morrison
Chief General Counsel
Boston Redevelopment Authority

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. _____, 1994

Then personally appeared before me the above-named Marisa Lago in her capacity as Director of the Boston Redevelopment Authority ("BRA"), who executed the foregoing Certificate of Project Termination on behalf of the BRA and acknowledged the same to be her free act and deed.

Notary Public
My Commission Expires: _____